

ROB SANDERS,  
  
Plaintiff,  
  
vs.  
  
CITY OF COLUMBIA,  
MISSOURI.  
  
Defendant.

BE IT REMEMBERED that on May 16, 17, and 18, 2018 this matter came before the Court for a bench trial on the Plaintiff's Second Amended Petition for Judicial Review, pursuant to section 536.150 RSMo., and Plaintiff appeared in person and by his attorney and Defendant appeared by its representative and its attorneys. The parties announced ready to proceed and evidence was presented after which the parties requested an opportunity to submit their respective post-trial briefs.

NOW on this 31<sup>st</sup> day of December, 2018, after careful consideration of the record before the Court, including the exhibits and testimony elicited at trial and the briefs filed by the parties, the Court makes the Findings of Fact and Conclusions of Law as follows:

1. From 1993 until September of 2011, Plaintiff was employed as a Police Officer with the City of Columbia's Police Department. Plaintiff's Trial Testimony, p. 2; Joint Exhibit 5.

2. Prior to August 15, 2011, Plaintiff had thirteen instances of documented discipline, including four suspensions. Plaintiff's Trial Testimony, p. 92; Joint Exhibit 5, pp. 16-24; Exhibits D2 through D34.

3. On August 15, 2011, two City of Columbia Police Officers, Kasper (“Kasper”) and Sedgwick (“Sedgwick”), went to the residence of Kenneth Baker (“Baker”) to arrest him for felony warrants. Baker, intoxicated and combative, engaged the two officers – both of whom were very physically fit – in a knock-down, drag-out fight that lasted over two minutes. During the fight, Baker managed to unlatch Kasper’s gun belt. Sedgwick eventually sprayed Baker with pepper mace, but Baker merely ‘spit it out and kept on fighting.’ While this was occurring, one of the Officers’ radio buttons was pushed, resulting in an “open” microphone, meaning that the sounds of the fight were broadcast over the radio. The sound of the fight caused twelve additional officers to go to the scene. Joint Exhibit 3, PAB Transcript at pp. 259-67, 285-88, 392.

4. The first extra officer to arrive was Officer Crites (“Crites”), another very fit officer, who went into the house to help control Baker. *Id.* at 392-94. The second was Plaintiff, who arrived just as Kasper, Sedgwick and Crites were walking out of the house with Baker in custody. Plaintiff saw Kasper’s gun belt falling off, and Kasper heaving so much from fatigue that he could not even re-latch it. Sedgwick, too, was clearly “gassed,” and Plaintiff believed that Baker had succeeded in fighting three fit officers for over two minutes – an “exhausting” length fight in law enforcement. *Id.* at 311-14, 397, 586. Baker was not fatigued, and remained so belligerent and combative that he had to be forcefully restrained in order to be searched. While attempting to control the still-resistive Baker, Crites applied a wrist lock, which is a pain compliance, joint manipulation technique. Crites had to apply a great deal of pressure, but Baker continued to resist with no apparent effect. Plaintiff was present for all of this interaction. *Id.* at 314-15, 395-97.

5. At the time of his arrest and thereafter, Baker was intoxicated. Baker resisted

arrest at the scene of his arrest and responding officers (who did not include Plaintiff) sprayed Baker with pepper spray. Joint Exhibit 5, pp. 1, 2; Plaintiff's Trial Testimony, pp. 6, 36, 39.

6. Finally, the officers were able to secure Baker, although he continued to resist. Baker remained combative enough that, in order to get him into the rear seat of Crites's car for transport back to the Police Department, the officers almost had to pull him through from the opposite door. By now, several other officers and supervisors were on the scene and Plaintiff, at the instruction of Sergeant Barb Buck, followed Crites back to the Department in his own car, to assist with Baker. Id. at 315-16. During the ride in Crites's patrol car, Baker remained belligerent, stating, "I hate all you motherfuckers;" "I wish all you all harm;" and "I wish somebody'd blow your-all's heads off." Id. at 397-98; Joint Exhibit 2, Patrol Car Videos, Crites In-Car Audio.

7. Baker was still intoxicated and under the effects of pepper spray while at the Police Department. Joint Exhibit 1; Joint Exhibit 5, pp. 1-4; Plaintiff's Trial Testimony, pp. 36, 39.

8. Once in the Police Department garage, Baker refused to get out of the car. Plaintiff came over and asked Crites if Baker had calmed down. Plaintiff then spoke to Baker and, in an attempt to build rapport, got Baker to agree to be cooperative in exchange for helping him wash the mace from his face. Using a garden hose in the garage, Plaintiff then spent over four minutes running water over Baker's head, face and neck – essentially, anywhere Baker asked him to. Plaintiff even held Baker's shirt up to his face so that Baker could blow his nose. Plaintiff continued to irrigate Baker's face until Baker told him that he was ready to stop. Joint Exhibit 3 at 316-17, 323-24.

9. During this contact and communication, Plaintiff noticed a number of things.

First, he noted Baker's strong build and physique, which Plaintiff described as "stout." Plaintiff immediately had the impression that Baker had the sort of sheer strength of someone in the construction trade. Second, Plaintiff noted that Baker was calling him "Boss" during their conversation. Plaintiff knew from previous training that "Boss" is a term used by prison inmates when speaking to guards. Third, Plaintiff noted that Baker had several tattoos. However, the tattoos were not clean and sharp, as one would get in a professional shop; rather, they were blurry and lacked detail. Plaintiff, from his training, believed they were consistent with prison tattoos that someone got when doing "hard time" in the penitentiary. Plaintiff gathered that Baker had served time in prison. As taught to him in his past training, Plaintiff was aware that prison inmates commonly practice techniques to assault guards during cell incursions and extractions. *Id.* at 317-23.

10. At the time he took Baker from the garage into the holding cell area, the totality of the circumstances indicated to Plaintiff that Baker was very strong, very fit, intoxicated, impervious to pain to some degree, had a propensity to violence, and likely had served real prison time. Plaintiff also knew that people under the effects of alcohol and/or drugs are often on a "roller coaster" – cooperative one moment, violent the next. Plaintiff justifiably believed that Baker was a dangerous individual. *Id.* at 317-23.

11. Because Plaintiff was not the arresting officer, and because the arresting officer was not yet there, Plaintiff and Crites could not begin the booking process. Instead, they took Baker to a holding cell to wait for Kasper and Sedgwick's return. Although irrigation with water is the initial treatment for mace, once that is done the effects are alleviated only by time and air. Therefore, Plaintiff gave Baker a paper towel to help him fan his face. The police department was supposed to have decontamination wipes in the booking area, however Plaintiff and Crites

both looked and could not find any. Furthermore, the water fountain/sink apparatus in Baker's holding cell did not work, and had not worked for many years. *Id.* at 324-29.

12. While Baker was in custody at the Police Department, he was not violent, he did not actively resist arrest, and he did not attempt to flee. Joint Exhibit 1; Joint Exhibit 5; Plaintiff's Trial Testimony, p. 55.

13. While Baker was in custody at the Police Department, he did not have a weapon or any item that could be used as a weapon. Joint Exhibit 1; Joint Exhibit 3, Plaintiff's PAB testimony, p. 405.

14. Baker was not handcuffed at the Police Department in the booking room, as he was escorted to the holding cell, and when he was placed in the holding cell. Joint Exhibit 1; Plaintiff's Trial Testimony, pp. 36, 55, 133.

15. While in the holding cell, Baker repeatedly asked for water to rinse his eyes. Joint Exhibit 1, 11:30:45 to 11:36:00 p.m., Joint Exhibit 5, pp. 2-3.

16. The sink in the holding cell was not functioning and Plaintiff told Baker that the only available water was from the toilet. Joint Exhibit 5, p. 2; Plaintiff's Trial Testimony, pp. 50-53.

17. Baker slapped the door to the holding cell after being told the only available water was from the toilet. Joint Exhibit 1; Plaintiff's Trial Transcript, pp. 51-54.

18. Plaintiff advised Baker that he needed to stop slapping the cell door and that if he did not stop doing so, he would be handcuffed to the ring in the holding cell. Joint Exhibit 5, p. 2; Plaintiff's Trial Testimony, pp. 54-55.

19. Plaintiff and two other officers waited in close proximity to the holding cell, out of view of Baker, anticipating that Baker would strike the door again. Joint Exhibit 1, 11:34:15 to

11:36:07 p.m.

20. While in the holding cell, Baker did not attempt to harm himself or other persons. Joint Exhibit 1; Joint Exhibit 5, p. 3; Plaintiff's Trial Testimony, p. 55.

21. There were no innocent bystanders present in or near Baker's holding cell. Joint Exhibit 1.

22. After Baker struck the holding cell door again, Plaintiff and two other officers went to the holding cell door and Plaintiff opened the door while the other two officers stood next to him. Joint Exhibit 1, 11:36:07 to 11:36:20 p.m.

23. After opening the holding cell door, Plaintiff had a verbal interaction with Baker for several seconds during which he instructed Baker to have a seat at the rear of the cell. Baker refused, cursing at Plaintiff, "Fuck you!" Plaintiff employed his verbal judo training and said to Baker, "Sir, is there anything I can say or do to make you peacefully have a seat at the back of the holding cell without using physical force against you." Baker responded with the same curse. *Id.* at 334-36. Plaintiff then used a two-handed shove on Baker with such force that Baker flew airborne, striking his head on the concrete holding cell wall. Joint Exhibit 1, 11:36:07 to 11:36:20 p.m.; Joint Exhibit 5; Plaintiff's Trial Testimony, p. 81.

24. During the seconds prior to Plaintiff's use of force, Baker was stationary and upright and made no threatening movements towards Plaintiff. Joint Exhibit 1, 11:36:07 to 11:36:20 p.m.; Joint Exhibit 5, p. 4; Plaintiff's Trial Testimony, pp. 55, 62, 63, 67.

25. Although there are no microphones or audio recording devices in the holding cells, the sound of Baker slamming into the concrete holding cell wall can be heard on Joint Exhibit 1 as it was picked up from the microphone in the booking room which is located down and around two hallways. Joint Exhibit 1, 11:36:07 to 11:36:20 p.m.

26. Baker was injured as a result of Plaintiff's use of force. Mike Matthes' Trial Testimony, pp. 83-84; Exhibit D1 (Offense Report from Baker Incident), p. 11.

27. Outside of the cell, Plaintiff realized he had some blood on his arm. He confirmed that it was not his own blood, so the officers went back into the cell to check Baker. They found a small laceration on Baker's head. Baker was conscious, and was threatening to kill Plaintiff. *Id.* at 343-44. Plaintiff instructed Officer Hibler ("Hibler") to call for medical assistance. Joint Communications would not answer their phone, and the officers' radios do not work well in the holding cell area; therefore, Hibler eventually had to call the Station Master. Once notified, the Station Master was to watch Baker on her video monitor while officers waited for paramedics to arrive. *Id.* at 345-47.

28. After Plaintiff used force on Baker, Plaintiff and two other officers handcuffed Baker to the ring attached to the back wall of the holding cell. Baker was then left lying on the floor of the cell with his hands handcuffed behind him. Joint Exhibit 1, 11:36:17 to 11:37:15 p.m.

29. Baker was left unattended on the floor of the holding cell for some twelve minutes until medical assistance entered the holding cell. Joint Exhibit 1, 11:37:30 to 11:49:36 p.m.

30. Baker was bleeding part or all of the time while lying on the floor of the holding cell handcuffed to the ring. Joint Exhibit 1, 11:36:17 to 11:37:15 p.m.; Plaintiff's Trial Testimony, p. 78.

31. After Plaintiff returned to the booking room, Plaintiff stated to his fellow officers: "Well, let's just say he lost round two." Joint Exhibit 1, 11:39:00 p.m.; Plaintiff's Trial Testimony, p. 80.

32. In the Columbia Police Department, any use of force resulting in injury must be

reviewed. During the review of Plaintiff's use of force, investigators viewed a video taken from the camera in Baker's cell. Chief of Police Kenneth Burton saw the video and, before any actual investigation had been done, announced to the Department's command staff that he was going to fire Plaintiff. *Id.* at 129, 550-51. Others convinced Chief Burton to allow an investigation, but he stated that nothing was going to change his mind and he was going to fire Plaintiff regardless of the outcome. *Id.* at 131.

33. The Internal Affairs Division ("IA") conducted an exhaustive investigation on all three charges. They interviewed a number of people, including Plaintiff; they reviewed multiple videos from the cell, booking area, garage, and patrol cars; they researched Department policies and procedures, and the law; and they consulted with the Department's own use of force expert. Chief Burton ordered that the investigation be complete by Friday, September 16, 2011. At the conclusion of the investigation, Internal Affairs determined that Plaintiff had acted within policy and procedure when he entered the cell and used force to handcuff Baker to the ring, and that the force was not excessive under the totality of the circumstances. Plaintiff had furthermore fully complied with policy by requesting paramedics after determining Baker was injured, because the Department did not have any policy requiring an officer to render first aid or to physically remain with an injured prisoner while waiting for medics. Because Plaintiff had followed the use of force and medical aid policies, Internal Affairs also determined that he had not abused or improperly treated a prisoner. *Id.* at 80-119. The report was reviewed and approved by the IA division supervisors, Lieutenant Shouse-Jones and Captain Bernhard. *Id.* at 77.

34. On September 16, Chief Burton distributed the Internal Affairs investigation to Plaintiff's chain of command: his direct supervisor, Sergeant Houston; his lieutenant, Chris Kelley; his captain, Brad Nelson; and the Deputy Chief, Steve Monticelli. Each of them



concurred completely with the Internal Affairs determinations. *Id.* at 530, 545-46, 552-53.

35. Chief Burton made the determination that Plaintiff had violated the Police Department's Use of Force Policy, the duty to appropriately render medical aid, and the guideline prohibiting abusive or improper treatment of a prisoner, and issued a notice of termination. Joint Exhibit 5, p. 9; Joint Exhibit 7 (HR Discharge Form); Joint Exhibit 14 (Chief Burton response to Internal Affairs Grievance upholding termination); Plaintiff's Trial Testimony pp. 82-84.

36. Plaintiff thereafter initiated a grievance and, after the initial review by Chief Burton resulted in a denial of his grievance, Plaintiff appealed the notice of termination to the Director of Human Resources, Margrace Buckler, requesting reinstatement. Ms. Buckler upheld the termination and did not reinstate Plaintiff. Joint Exhibit 16 (Margrace Buckler's affirmance of termination); Plaintiff's Trial Testimony, p. 84.

37. Plaintiff next appealed to the Personnel Advisory Board ("PAB"), a citizen's advisory panel, whose members have no affiliation with the Columbia Police Department or the City of Columbia. Joint Exhibit 17 (Plaintiff's request for PAB hearing); Plaintiff's Trial Testimony, p. 84.

38. On November 15, 2013, the PAB held a lengthy hearing, at which they heard from twelve witnesses, including Plaintiff, and reviewed numerous exhibits. Joint Exhibit 4 (PAB Findings and Recommendations); Joint Exhibit 3 (PAB hearing transcript); Plaintiff's Trial Testimony, p. 89.

39. After the hearing, the PAB upheld Plaintiff's termination, and the majority recommended against reinstating Plaintiff. The PAB's recommendation was provided to City Manager Mike Matthes, along with the transcript and exhibits of the PAB's proceeding. Joint

Exhibit 4; Joint Exhibit 5.

40. City Manager Matthes reviewed the exhibits and testimony introduced at the PAB hearing, and the recommendation of the PAB, and thereafter issued a 24-page Final Determination containing Findings of Fact and Conclusions of Law. Joint Exhibit 5.

41. City Manager Matthes determined that Plaintiff's use of force was unreasonable, unnecessary, and retaliatory, and violated the City's Use of Force Policy and Section 19-225(a)(4) of the City's Ordinances, warranting Plaintiff's termination and rejection of his request for reinstatement. Joint Exhibit 5, pp. 4-7, 13-15.

42. City Manager Matthes determined that Plaintiff's treatment of Baker was abusive and improper, in violation of City Ordinance 19-225(a)(3), warranting Plaintiff's termination and rejection of his request for reinstatement. Joint Exhibit 5, pp. 7-8, 14-15.

43. In reaching his decision that Plaintiff's termination was warranted and his request for reinstatement should be rejected, City Manager Matthes reviewed Plaintiff's history of discipline in the Police Department, including thirteen disciplinary incidents and four suspensions. Joint Exhibit 5, p. 24; Exhibits D2-D34; Mike Matthes' Trial Testimony, pp. 44-45.

### **CONCLUSIONS OF LAW**

1. This Court has jurisdiction over this action pursuant to Mo. Rev. Stat. § 536.150.
2. Article 5, Section 18 of the Missouri Constitution states:

All final decisions, findings, rules and orders on any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record.

Mo. Const. Art. 5, § 18.

3. Section 21 of the City of Columbia Charter empowers the City Manager “when necessary for the good of the service, [to] remove all officers and employees of the City . . . .”

Joint Exhibit 19.

4. Section 19-227 of the City’s Ordinances states:

Suspension or termination.

The city manager has the authority to suspend or terminate the services of any employee because of:

- (1) A reduction in force due to lack of funds or a curtailment of work.
- (2) For misconduct, insubordination, violation of regulations (as set forth in this section).
- (3) When such action becomes necessary for the good of the service.

Joint Exhibit 27.

5. The City of Columbia Police Department’s Use of Force Policy provides that “[t]he use of unreasonable force has never been, and will never be, tolerated as it degrades the community’s confidence in the police, exposes officers to legal and physical hazards, and violates the very Constitutional rights the police are sworn to uphold and protect.” Joint Exhibit 40, Section I, p. 1.

6. The City’s Use of Force Policy states that “[r]easonableness is determined from an objective, not subjective, perspective. The question is whether an officer’s actions were ‘objectively reasonable’ in light of the facts and circumstance confronting him/her, without regard to intent or motivation.” *Id.* at Section III.3.1., p. 2.

7. The City’s Use of Force Policy states:

The test of reasonableness is not capable of precise definition or mechanical application but instead requires careful attention to the facts and circumstances of each particular case, including:

- whether the suspect poses an immediate threat to the safety of officers or others;
- whether the suspect is actively resisting arrest or attempting to evade arrest by flight;

- the severity of the crime at issue;
- the number of suspects and officers involved;
- the condition of the officer and suspect (size, age, strength, skill, injury, and fatigue);
- the suspect's mental state;
- the duration of the action;
- the use of alcohol or drugs by the suspect;
- the suspect's mental or psychiatric history;
- the availability of an item that could be used as a weapon;
- the suspect's history of violence or weapon use;
- the presence of innocent bystanders;
- the reasonably likely effects of the force;
- whether a subject is restrained or partially restrained; and
- any and all other relevant factors.

*Id.* at Section III, 3.3., pp. 2-3.

8. Section 19-225(a)(3) of the City's Ordinances states that "just cause for . . . discharge" includes "[a]busive or improper treatment of a . . . prisoner." Joint Exhibit 25.

9. Section 19-225(a)(3) is not unconstitutionally vague or ambiguous on its face. Also, City Ordinance 19-225(a)(3), as applied to Plaintiff, is not unconstitutionally vague or ambiguous. *See Bd. of Mgmt of Parkway Towers Condo Ass'n v. Carcopa*, 403 S.W.3d 590, 592 (Mo. 2013).

10. Section 19-225(a)(4) of the City's Ordinances states that "just cause for . . . discharge" includes "violation of any lawful and reasonable departmental or city rule, regulation or directives." Joint Exhibit 25.

11. Section 19-239 of the City's Ordinances states:

Appeals to personnel advisory board.

Eligible city employees shall have the privilege of appealing grievance determinations involving . . . dismissals . . . against them to the personnel advisory board provided the grievance procedure has been utilized by the employee.

...

Personnel advisory board appeal procedures are as follows:

...

After hearing and consideration of the evidence and within ten (10) working days after the hearing, the board shall render its recommendations in writing to the city manager. . . The city manager shall review the transcript and exhibits and, within thirty (30) days of receiving the transcript, render a decision supported by findings of fact and conclusions of law which shall be final, binding and not subject to further administrative appeal.”

Joint Exhibit 31.

12. Section 536.150.1 of the Missouri Revised Statutes states:

. . .[T]he court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

R.S. Mo. § 536.150.1.

13. It is not the Courts duty to decide this case based on its opinion of the proper punishment, if any, to be imposed on Plaintiff by Defendant, instead the Court’s review of the City Manager Matthes’ Final Determination under Section 536.150.1 “is confined to exclusively legal considerations” – meaning that this Court must determine whether the decision “was or was not lawful.” *Missouri Nat’l Educ. Ass’n v. Missouri State Bd. of Educ.*, 34 S.W.3d 266, 280 (Mo. App. 2000).

14. In *Rice v. Bishop*, 858 S.W.2d 732, 736 (Mo. App. 1993), the Court held: “This sweep of adjudicative prerogative accorded a circuit court by § 536.150.1 is foreshortened where the review involves the exercise of discretion. The provision in § 536.150.1, that in such a judicial inquiry ‘the court shall not substitute its discretion for discretion legally vested’ in the administrative officer confines the judgment to ‘exclusively legal considerations.’ It thereby takes care that the court not infringe on an authority reserved to the legislative or executive branches.”

15. In *Cox v. City of Columbia*, 764 S.W.2d 501 (Mo. App. 1989), the Court held that “the city manager has a wide range of choices available to allow him to protect the best interests of the city” and that “by requiring the city manager to exercise his reason, the City of Columbia has vested him with discretion in personnel matters.” *Id.* at 504.

16. This Court may only overturn City Manager Matthes’ findings if they are not supported by “substantial evidence.” *Mo. State Bd. of Educ.*, 271 S.W.3d at 11. “Substantial evidence is merely evidence which, if true, has probative force upon the issues, i.e., evidence favoring facts which are such that reasonable men may differ as to whether it establishes them.” *Clark v. Board of Dir. Of School Dist. of Kansas City*, 915 S.W.2d 766, 773 (Mo. App. 1996); *Homa v. Carthage R-IX School Dist.*, 345 S.W.3d 266, 279 (Mo. App. 2011).

17. City Manager Matthes reviewed the exhibits and testimony adduced at the PAB hearing, and the findings and recommendation of the PAB, and issued a Final Determination containing Findings of Fact and Conclusions of Law in accordance with Section 19-227 of the City’s Ordinances. Joint Exhibit 5; Mike Matthes’ Trial Testimony, pp. 16-17, 34, 42, 128.

18. There is substantial evidence in the record supporting City Manager Matthes’ Final Determination, Joint Exhibit 5, including the exhibits and testimony introduced in the PAB hearing, the PAB’s recommendation, and the testimony and exhibits introduced at trial.

19. City Manager Matthes acted lawfully in his capacity as city manager of Defendant in determining that Plaintiff’s use of force on August 15, 2011 was objectively unreasonable and retaliatory, and violated the City’s Use of Force Policy and City Ordinance 19-225(a)(4).

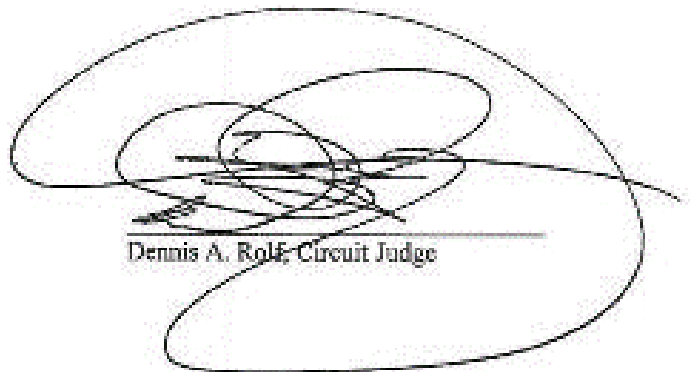
20. City Manager Matthes acted lawfully in his capacity as city manager of Defendant in determining that Plaintiff’s treatment of Baker was abusive and improper in violation of City Ordinance 19-225(a)(3).

21. City Manager Matthes' Final Determination is also supported by substantial evidence of Plaintiff's history of discipline, including thirteen instances of discipline and four suspensions in approximately seventeen years of service in the City of Columbia Police Department. Joint Exhibit 5, pp. 16-24; Exhibits D2-D34; Mike Matthes' Trial Testimony, pp. 44-45.

22. Plaintiff is not entitled to the relief he requests, including legal or equitable relief, reinstatement, back pay with interest, or benefits, based upon substantial evidence supporting City Manager Matthes' Final Determination, and the City is entitled to Judgment on all claims.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered in favor of the Defendant, City of Columbia, and against Plaintiff, Rob Sanders, on all claims in Plaintiff's Second Amended Petition and that the cost of this action are taxed against Plaintiff.

Dated: December 31, 2018

A large, stylized handwritten signature in black ink, appearing to read 'Dennis A. Rolfe', is written over a horizontal line.

Dennis A. Rolfe, Circuit Judge

COURT SEAL OF



BOONE COUNTY